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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 218 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made t2

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5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

J.F. GILBART,

Versus

DIRECTOR GENERAL OF POLICE

Appearance:

1. Special Civil Application No. 218 of 1991

MR RR VAKIL for Petitioner No. 1

MR PR ABICHANDANI, ASSTT.GOVERNMENT PLEADER for Respondent No. 1-TT GOVERNMENT PLEADER for Respondent No. 1-TT.GOVERNMENT PLEADER for Respondent N . 1-TT.GOVERNMENT PLEADER for Respondent No. 1-TT.GOVERNMENT PLEADER for Respo dent No. 1-TT.GOVERNMENT PLEADER for Respondent No. 1-TT.GOVERNMENT PLEADER fo Respondent No. 1-TT.GOVERNMENT PLEADER for Respondent No. 1-TT.GOVERNMENT PLE DER for Respondent No. 1-TT.GOVERNMENT PLEADER for Respondent No. 1-TT.GOVERNM NT PLEADER for Respondent No. 1-TT.GOVERNMENT PLEADER for Respondent No. 1-TT. OVERNMENT PLEADER for Respondent No. 1-TT.GOVERNMENT PLEADER for Respondent No 1-TT.GOVERNMENT PLEADER for Respondent No. 1-TT.GOVERNMENT PLEADER for Respon ent No. 1-TT.GOVERNMENT PLEADER for Respondent No. 1-TT.GOVERNMENT PLEADER for Respondent No. 1-TT.GOVERNMENT PLEADER for Respondent No. 1-TT.GOVERNMENT PLEA ER for Respondent No. 1-TT.GOVERNMENT PLEADER for Respondent No. 1-TT.GOVERNME T PLEADER for Respondent No. 1-TT.GOVERNMENT PLEADER for Respondent No. 1-TT.G VERNMENT PLEADER for Respondent No. 1-TT.GOVERNMENT PLEADER for Responden

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 10/07/2003

ORAL JUDGEMENT

The petitioner, a retired Police Inspector, has approached this Court with this petition under Articles 14, 16 and 226 of the Constitution of India, on being aggrieved by non-consideration of his case by the respondent authorities for promotion to the higher post, and has sought quashment of communication Annexure "A", whereby his representation for deemed promotion from May, 1969, when his junior Mr. M.C. Desai came to be promoted as Deputy Superintendent of Police, came to be turned down (Annexure "A"). The case of the petitioner is that he joined Bombay State Police Force on 6th December, 1948 and after rendering about 13 years of service, he joined in Gujarat State Police with effect from 1961 with all benefits of his past service. In 1963, he was promoted as Police Inspector and till the date of his voluntary retirement i.e. 3.6.1976, he continued on the same post. The petitioner's case further is that when he became eligible for further promotion to the post of Deputy Superintendent, an enquiry came to be initiated against him in the year 1969, which was conducted in 1970. Because he could not remain present before the Enquiry Officer, case was proceeded ex-parte against him and order of dismissal was passed on 28th September, 1971, against which he had preferred Departmental Appeal, which was allowed on 22.11.1971. As per the case of the petitioner, by virtue of an order passed by the Government, he came to be reinstated on 4th July, 1972. In the meantime, the Departmental Promotion Committee had met on 8.2.1972. After the petitioner was reinstated from 4.7.1972, a denovo enquiry was ordered and charge-sheet was served on him. During the pendency of the Departmental proceedings, the Departmental Promotion Committee again met on 12th, 13th and 14th December, 1973. The petitioner was dismissed on 1.11.1974, however, against the order of dismissal, he preferred a Departmental Appeal and he came to be reinstated on 9th October, 1975, by substituting the punishment of dismissal with stoppage of one increment. On 3.6.1976, the petitioner opted for voluntary retirement. Thereafter, on 23rd August, 1976, Departmental Promotion Committee again met.

2. The case of the petitioner in substance is that one Mr. M.C. Desai, who was junior to him came to be promoted in 1969 and the petitioner, though eligible to be considered for promotion, was not promoted at that

point of time, eventhough at that point of time there was no Departmental proceedings pending against him. He has therefore sought deemed date of promotion from 1969. The second fold of contention is that the case of the petitioner was not considered by the Departmental Promotion Committee when it met during 12th, 13th and 14th December, 1973; that seal cover procedure was not followed and the petitioner's right of promotion is therefore jeopardised.

3. The petition is opposed to by the respondents and an affidavit-in-reply is filed. It is sworn by Mr. J.R. Mod, Under Secretary, Home Department. The case of the respondents as reflected from the affidavit is that the case of the petitioner was considered at the relevant time but because of the pendency of the Departmental proceedings against him, he was not promoted and when the Departmental Promotion Committee met again in 1976, the petitioner was not in service. It is also the case of the respondents that Mr. M.C. Desai was not promoted in 1969, but was promoted in November, 1973 and therefore the reliefs sought for by the petitioner cannot be granted.

4. Learned Advocate Mr. Vakil appearing for the petitioner has reiterated the contentions raised in the petition. He has vehemently contended that even as per the case of the respondents, the petitioner's case was not considered by the Departmental Promotion Committee because it was not placed before the Departmental Promotion Committee at all and his name was removed from the list prepared by the selection Committee. He has placed reliance on an unreported decision of this Court in Special Civil Application No. 2060 of 1985 rendered on November 5, 1985 (Coram : R.C. Mankad, J.) and submitted that the petition be allowed.

5. Learned Assistant Government Pleader Mr. P.R.Abichandani has drawn attention of this Court to the relevant dates and submitted that when the Departmental Promotion Committee met on 8th February, 1972 and 23rd August, 1976, the petitioner was not in service; on the first occasion because of his dismissal and on the second occasion because of his voluntary retirement. When the Departmental Promotion Committee met during 12th, 13th and 14th of December, 1973, the enquiry was pending against the petitioner. Thus, it appears that the case of the petitioner was considered as is reflected in paragraph 10 of the affidavit-in-reply, wherein it has been categorically stated that the case of the petitioner was considered by the Departmental Promotion Committee

twice i.e. in 1972 and 1973. Mr. Abichandani also submitted that in any event, the result would not have been different in light of the factual data which is reflected in the case of the petitioner.

6. From the contentions raised before this Court it is clear that the petitioner's case that his junior Mr. M.C Desai was promoted in 1969 appears to be not correct because in affidavit-in-reply it has been specifically contended that promotion was given to Mr. Desai in November, 1973 after the Departmental Promotion Committee met on 8th February, 1972 when there was no question of considering the petitioner's case as he was already dismissed from service following departmental enquiry.

6.1 It is also clear that the petitioner, after his reinstatement for the second time on 9th October, 1975, took voluntary retirement with effect from 3.6.1976. During this period, the Departmental Promotion Committee did not met. The Departmental Promotion Committee met only on 23rd August, 1976 and therefore there was no question to consider the case of the petitioner for promotion to Deputy Superintendent of Police, at the meeting held on 23rd August, 1976. The only question that is now required to be considered is whether the petitioner was considered for promotion when the Departmental Promotion Committee met on 12th, 13th and 14th of December, 1973. In this regard it would appropriate to quote paragraph 10 of the affidavit-in-reply, wherein it has been contended as under:-

> "With regard to the averments made in para 5.5, it is emphatically denied that the case of the petitioner was never considered by D.P.C. On the contrary, the case of the petitioner was considered by two times, in the meetings held in 1972 and in 1973."

Thus, it is clear that the case of the petitioner was considered in 1973.

6.2 Learned Advocate Mr. Vakil did draw attention of this Court to other part of the affidavit-in-reply wherein it is stated that Promotion Committee did not find him fit for promotion. It was therefore contended that Departmental Promotion Committee never considered the case of the petitioner. However, this Court finds not much substance in this contention in light of the specific averments made in paragraph 10 of the affidavit-in-reply.

7. It would also be appropriate to note that when the Departmental Promotion Committee met in 1973, the petitioner was facing Departmental proceedings at the end of which he ultimately came to be dismissed on 1.11.1974. It was only after he preferred appeal that he came to be reinstated on 9th October, 1974 and therefore this Court is of the view that no right of the petitioner is infringed. The reliefs sought for by the petitioner therefore, cannot be granted and the petition deserves to be dismissed. It is therefore dismissed. Rule is discharged with no order as to costs.

(A.L.Dave, J.)

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